

§ 4.303

not, however, claim an interest less than the decedent's total interest in any one individual tract.

(3) The tribe must file a written notice of purchase with the Superintendent, together with the tribe's certification that copies have been mailed on the same date to the administrative law judge or Indian probate judge and to the affected heirs or beneficiaries. Upon failure to timely file a notice of purchase, the right to distribution of all unclaimed interests will accrue to the heirs or beneficiaries.

§ 4.303 Notice by surviving spouse to reserve a life estate.

When the heir or beneficiary whose interests are subject to the tribal option is a surviving spouse, the spouse may reserve a life estate in one-half of such interests. The spouse must file a written notice to reserve with the Superintendent within 30 days after the tribe has exercised its option to purchase the interest in question, together with a certification that copies thereof have been mailed on the same date to the administrative law judge or Indian probate judge and the tribe. Failure to timely file a notice to reserve a life estate will constitute a waiver thereof.

§ 4.304 Rehearing.

Any interested party aggrieved by the probate decision may, within 60 days from the date of the probate decision, file with the administrative law judge or Indian probate judge a written petition for rehearing in accordance with § 4.241.

§ 4.305 Hearing on tribal option to purchase interests.

(a) *Demand for hearing.* Any interested party aggrieved by the exercise of the tribal option to purchase the interests in question or the valuation of the interests as set forth in the valuation report may file with the administrative law judge or Indian probate judge a written demand for hearing. The demand must:

(1) Be filed within 60 days from the date of the probate decision or 60 days from the date of the decision on rehearing, or within 20 days from the date the tribe exercises its option to purchase

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available interests, whichever is applicable;

(2) Include a certification that copies of the demand have been mailed on the same date to the Superintendent and to each interested party; and

(3) State specifically and concisely the grounds upon which it is based.

(b) *Notice of hearing.* The administrative law judge or Indian probate judge must, upon receiving a demand for hearing:

(1) Set a time and place for the hearing after expiration of the 60-day period fixed for the filing of the demand for hearing as provided in § 4.305(a); and

(2) Mail a notice of the hearing to all interested parties not less than 30 days in advance.

(c) *Burden of proof at the hearing.* At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests as set forth in the valuation report will have the burden of proving his or her position.

(d) *Decision after hearing; appeal.* (1) Upon conclusion of the hearing, the administrative law judge or Indian probate judge will issue a decision that determines all of the issues including, but not limited to:

(i) The fair market value of the interests purchased by the tribe; and

(ii) Any adjustment of the fair market value made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests.

(2) The decision must specify the right of appeal to the Board of Indian Appeals within 60 days from the date of the decision in accordance with §§ 4.310 through 4.323.

(3) The administrative law judge or Indian probate judge must lodge the complete record relating to the demand for hearing with the LTRO as provided in § 4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each interested party.

§ 4.306 Time for payment.

A tribe must pay the full fair market value of the interests purchased, as set forth in the valuation report or as determined after hearing in accordance with § 4.305, whichever is applicable.